



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: October 16, 2019

TIME: 11:02 AM

WSR 19-21-104

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 19-09-059 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject)

182-513-1100, Definitions related to long-term services and supports (LTSS)

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 26, 2019	10:00 AM	Health Care Authority Cherry Street Plaza <b>Sue Crystal Conf Room 106A</b> 626 8 <sup>th</sup> Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: <a href="https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf">https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf</a> or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than November 27, 2019 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: HCA Rules Coordinator

Address: PO Box 42716, Olympia WA 98504-2716

Email: [arc@hca.wa.gov](mailto:arc@hca.wa.gov)

Fax: (360) 586-9727

Other:

By (date) November 26, 2019

Assistance for persons with disabilities:

Contact Amber Lougheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: Telecommunication Relay Services (TRS): 711

Email: [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov)

Other:

By (date) November 15, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is revising the definition of alternate living facility (ALF) to include staffed residential facility, group care facility for medically complex children, and facility for children and youth twenty years of age and younger where a state-operated living alternative program is operated.

**Reasons supporting proposal:** See Purpose

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160

**Statute being implemented:** RCW 41.05.021, 41.05.160

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** N/A

**Name of proponent:** (person or organization) Health Care Authority

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Jason Crabbe	PO Box 42716, Olympia WA 98504-2716	360-725-9563
Implementation:	Steve Kozak	PO Box 45534, Olympia WA 98504-5534	360-725-1343
Enforcement:	Steve Kozak	PO Box 45534, Olympia WA 98504-5534	360-725-1343

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. The changes to the proposed rules apply to clients, so they do not impose any costs on businesses.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Date:** October 16, 2019

**Name:** Wendy Barcus

**Title:** HCA Rules Coordinator

**Signature:**



**WAC 182-513-1100 Definitions related to long-term services and supports (LTSS).** This section defines the meaning of certain terms used in chapters 182-513 and 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCB waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community. See chapter 182-500 WAC for additional definitions.

**"Adequate consideration"** means that the fair market value (FMV) of the property or services received, in exchange for transferred property, approximates the FMV of the property transferred.

**"Administrative costs" or "costs"** means necessary costs paid by the guardian including attorney fees.

**"Aging and long-term support administration (AL TSA)"** means the administration within the Washington state department of social and health services (DSHS).

**"Alternate living facility (ALF)"** is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

- (a) An adult family home (AFH) licensed under chapter 70.128 RCW.
- (b) An adult residential care facility (ARC) licensed under chapter 18.20 RCW.
- (c) A (~~mental~~) behavioral health adult residential treatment facility licensed under chapter 246-337 WAC.
- (d) An assisted living facility (AL) licensed under chapter 18.20 RCW.
- (e) A developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.
- (f) An enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.
- (g) An enhanced service facility (ESF) licensed under chapter 70.97 RCW.
- (h) A staffed residential facility licensed under chapter 74.15 RCW.
- (i) A group care facility for medically complex children licensed under chapter 74.15 RCW.
- (j) A facility for children and youth twenty years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.

**"Assets"** means all income and resources of a person and of the person's spouse, including any income or resources which that person or that person's spouse would otherwise currently be entitled to but does not receive because of action:

- (a) By that person or that person's spouse;
- (b) By another person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse; or
- (c) By any other person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse.

**"Authorization date"** means the date payment begins for long-term services and supports (LTSS) under WAC 388-106-0045.

**"Clothing and personal incidentals (CPI)"** means the cash payment (under WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

**"Community first choice (CFC)"** means a medicaid state plan home and community based service developed under the authority of section 1915(k) of the Social Security Act under chapter 388-106 WAC.

**"Community options program entry system (COPES)"** means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-106 WAC.

**"Community spouse (CS)"** means the spouse of an institutionalized spouse.

**"Community spouse resource allocation (CSRA)"** means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protections institutionalized (SIPI) spouse to the spousal impoverishment protections community (SIPC) spouse.

**"Community spouse resource evaluation"** means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent continuous period of institutionalization.

**"Comprehensive assessment reporting evaluation (CARE) assessment"** means the evaluation process defined under chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

**"Continuing care contract"** means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved.

**"Continuing care retirement community"** means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

**"Dependent"** means a minor child, or one of the following who meets the definition of a tax dependent under WAC 182-500-0105: Adult child, parent, or sibling.

**"Developmental disabilities administration (DDA)"** means an administration within the Washington state department of social and health services (DSHS).

**"Developmental disabilities administration (DDA) home and community based (HCB) waiver"** means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-845 WAC authorized by DDA. There are five DDA HCB waivers:

(a) Basic Plus;

(b) Core;

(c) Community protection;

(d) Children's intensive in-home behavioral support (CIIBS); and

(e) Individual and family services (IFS).

**"Equity"** means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

**"Fair market value (FMV)"** means the price an asset may reasonably be expected to sell for on the open market in an agreement, made by two parties freely and independently of each other, in pursuit of their own self-interest, without pressure or duress, and without some special relationship (arm's length transaction), at the time of transfer or assignment.

**"Guardianship fees" or "fees"** means necessary fees charged by a guardian for services rendered on behalf of a client.

**"Home and community based (HCB) waiver programs authorized by home and community services (HCS)"** means medicaid HCB waiver programs developed under the authority of Section 1915(c) of the Social Security Act under chapter 388-106 WAC authorized by HCS. There are three HCS HCB waivers: Community options program entry system (COPES), new freedom consumer directed services (New Freedom), and residential support waiver (RSW).

**"Home and community based services (HCBS)"** means LTSS provided in the home or a residential setting to persons assessed by the department.

**"Institutional services"** means services paid for by Washington apple health, and provided:

- (a) In a medical institution;
- (b) Through an HCB waiver; or

(c) Through programs based on HCB waiver rules for post-eligibility treatment of income under chapter 182-515 WAC.

**"Institutionalized individual"** means a person who has attained institutional status under WAC 182-513-1320.

**"Institutionalized spouse"** means a person who, regardless of legal or physical separation:

- (a) Has attained institutional status under WAC 182-513-1320; and
- (b) Is legally married to a person who is not in a medical institution.

**"Life care community"** see continuing care community.

**"Likely to reside"** means the agency or its designee reasonably expects a person will remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

**"Long-term care services"** see "Institutional services."

**"Long-term services and supports (LTSS)"** includes institutional and noninstitutional services authorized by the department.

**"Medicaid personal care (MPC)"** means a medicaid state plan home and community based service under chapter 388-106 WAC.

**"Most recent continuous period of institutionalization (MRCPI)"** means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is determined under WAC 182-513-1320.

**"Noninstitutional medicaid"** means any apple health program not based on HCB waiver rules under chapter 182-515 WAC, or rules based on a person residing in an institution for thirty days or more under chapter 182-513 WAC.

**"Nursing facility level of care (NFLOC)"** is under WAC 388-106-0355.

**"Participation"** means the amount a person must pay each month toward the cost of long-term care services received each month; it is

the amount remaining after the post-eligibility process under WAC 182-513-1380, 182-515-1509, or 182-515-1514. Participation is not room and board.

**"Penalty period" or "period of ineligibility"** means the period of time during which a person is not eligible to receive services that are subject to transfer of asset penalties.

**"Personal needs allowance (PNA)"** means an amount set aside from a person's income that is intended for personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, ALF, or at home.

**"Room and board"** means the amount a person must pay each month for food, shelter, and household maintenance requirements when that person resides in an ALF. Room and board is not participation.

**"Short stay"** means residing in a medical institution for a period of twenty-nine days or fewer.

**"Special income level (SIL)"** means the monthly income standard that is three hundred percent of the supplemental security income (SSI) federal benefit rate.

**"Spousal impoverishment protections"** means the financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The allocation process is used to discourage the impoverishment of a spouse due to the other spouse's need for LTSS. This includes services provided in a medical institution, HCB waivers authorized under 1915(c) of the Social Security Act, and through December 31, 2018, services authorized under 1115 and 1915(k) of the Social Security Act.

**"Spousal impoverishment protections community (SIPC) spouse"** means the spouse of a SIPI spouse.

**"Spousal impoverishment protections institutionalized (SIPI) spouse"** means a legally married person who qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program only because of the spousal impoverishment protections under WAC 182-513-1220.

**"State spousal resource standard"** means the minimum CSRA standard for a CS or SIPC spouse.

**"Third-party resource (TPR)"** means funds paid to or on behalf of a person by a third party, where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. The agency does not pay for these services if there is a third-party resource available.

**"Transfer"** means, in the context of long-term care eligibility, the changing of ownership or title of an asset, such as income, real property, or personal property, by one of the following:

- (a) An intentional act that changes ownership or title; or
- (b) A failure to act that results in a change of ownership or title.

**"Uncompensated value"** means the fair market value (FMV) of an asset on the date of transfer, minus the FMV of the consideration the person receives in exchange for the asset.

**"Undue hardship"** means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria under WAC 182-513-1367.